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Candace Havens
Director

MEMORANDUM

DATE: January 11, 2013

TO: Marcia Johnson, Chair of Zoning and Planning Committee
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services
Bob Rooney, Chief Operating Officer
Dori Zaleznik, Commissioner of Health and Human Services

SUBJECT: Sidewalk Cafés

MEETING DATE: January 14, 2013

CC: Bruce Proia, Fire Chief
Dave Turocy, Commissioner of Public Works
Chief Mintz, Police Department
Donnalyn Kahn, City Solicitor
Linda Plaut, Director of Cultural Affairs
Ana Gonzalez, Director of Community Engagement

A handwritten signature in black ink, appearing to be "CH" or similar initials.

BACKGROUND

Over the summer of 2012, department heads from Planning, ISD, Health and Human Services, and the Executive Office (Economic Development Cluster) met to discuss the potential for sidewalk cafés to enliven our streetscapes and enhance the vitality of our commercial areas. Consistent with other current initiatives of the Mayor, the Zoning and Planning Committee and Economic Development Commission, as well as the objectives of the *Comprehensive Plan*, the Economic Development Cluster has developed a proposal that also incorporates the health, safety and general welfare interests of various City departments, which could be crafted into ordinance language, if supported by the Zoning and Planning Committee.

Several City departments oversee activities that occur on City sidewalks, particularly with regards to restaurants. The Department of Health and Human Services monitors licensing of food and liquor sales, as well as "extensions of premises" through the Board of License Commissioners. The Commissioner of Public Works is generally responsible for maintenance of City sidewalks and for anything placed on them. The Fire Department oversees occupancy limits and fire safety features, especially in restaurant kitchens. The Planning Department evaluates allowed uses, with

particular attention paid to parking requirements that may be triggered by additional seating. Inspectional Services staff enforces compliance with the zoning and building codes, including accessibility standards.

The Economic Development Cluster reviewed sidewalk café ordinances from Boise, ID; Chicago, IL; Charleston, SC; Hoboken, NJ; San Luis Obispo, CA; Port Huron, MI; Lodi, CA; San Francisco, CA; Philadelphia, PA; Brookline, MA; Banff, Alberta; and several boroughs in Manhattan, NY. The group identified some common characteristics and gained insights into the kinds of controls others have used to oversee their cafés. After thorough review of these documents, the group concluded it would be best to designate one department to accept the applications and obtain feedback from the other departments noted previously. Because the Health and Human Services Commissioner is the liaison to the Board of License Commissioners, all agreed that the Health and Human Services Department would be an appropriate place for restaurateurs to apply for sidewalk café permits. The Commissioner of HHS would route proposals to Police, Fire, DPW, ISD, and Planning and schedule appropriate reviews for licensing before the Licensing Board, and would make a determination as to whether all agreed-upon standards are met.

PROGRAM FEATURES

Accessibility. There must be a minimum of four feet of unobstructed sidewalk to allow clear access for people of all abilities between the outdoor dining area (including tables, chairs, umbrellas, signs, and other dining amenities that are placed on the sidewalk adjacent to the eatery) and any other permanent or temporary structures or devices (including but not limited to trees, parking meters, utility poles, bike racks, trash cans, flower beds, or other items that may be placed between the building and the curb line).

Parking. Restaurants with parking that conforms to City standards may request up to eight chairs or 10% more seating than the maximum allowed by the Zoning Regulations, whichever is greater. If the restaurant desires more than this number of seats, parking must be provided in conformance with the City's parking regulations and may be subject to a special permit. The staff of the Departments of Planning or Inspectional Services can assist applicants in determining the parking required for a business, as well as ways to meet the requirement. No new parking spaces will be required if legally allowed seats from inside the restaurant are moved outside, and no more than eight new seats or 10% more seating than allowed by ordinance are added in order for the restaurant to begin operations; however, the "extra" outdoor spaces may not be moved inside, thus increasing their total interior seat count without requiring a recalculation of the parking requirement and assessment as to whether the extra seating triggers a requirement for additional parking and/or a special permit.

Serving of Alcohol. A restaurant that has a license to sell alcohol inside the premises may also serve alcohol outdoors within an approved area designated for restaurant service. Prior to selling alcohol outside, the restaurant must appear before the Board of License Commissioners to request an extension of the premises. All legal requirements for sale of alcohol must be honored. Such establishments must post a sign at all exits that reads, *"It is unlawful to consume alcoholic beverages not purchased on the premises or to remove them from the boundaries of this sidewalk café."* There must also be an unobstructed view of the outdoor seats from inside the restaurant.

Designated dining area. Where alcohol is served, the area where it is consumed and/or served must be clearly delineated with a barrier such as a planter, rope, handrail, or other feature that separates it from the sidewalk or publicly accessible way and is no less than three feet in height, stable, removable, and not fastened to the sidewalk. No alcohol may be served or carried beyond this designated area. Where alcohol is not served, such barriers are allowed, but not required. Only those areas immediately adjacent to the building where the restaurant is located may be used for outdoor dining and dining may not spill over to areas in front of adjacent properties.

Maintenance. The area surrounding the café shall be free of litter, debris, food, and wrappers and sidewalks shall be washed down on a daily basis. Food from the café shall not be disposed of in city containers.

Sun protection. Umbrellas and awnings that offer protection from the elements and enliven the streetscape are encouraged, and must be fastened, weighted, and stable. Building permits may be required for awnings, so applicants should provide a rendering of any proposed awning to the Department of Inspectional Services to make that determination in advance of ordering or installing such features.

Sidewalk expansions. Restaurants located on a corner, by a mid-block crosswalk, or where an expansion of the sidewalk would be complementary to the physical design of the streetscape, may request permission to expand the sidewalk at their own expense in order to create additional seating outdoors. The applicant shall be responsible for designing the proposed expansion subject to the approval of the Traffic Council (if parking is removed), the Planning and Development Director, and the Commissioner of Public Works. Plans for the sidewalk extension shall be submitted with the application to the Commissioner of Health and Human Services, who will route the plans to the Engineering Division of the Public Works Department for review. The Department of Public Works will be responsible for installing such sidewalk extensions, if plans meet with the approval of the aforementioned departments. The cost of installations will vary, but would be charged at the current rate of construction.

ADMINISTRATION

Permit Required. A sidewalk café permit shall be required to allow sales and consumption of food and/or beverages at a sidewalk café. To be eligible for a permit, applicants must comply with the requirements listed below. Failure to comply with these requirements may result in denial of the application. Once issued, a permit is valid for one year and expires at midnight on March 31 of each year unless application for annual renewal has been made prior to the expiration date.

Renewals. Sidewalk Café permits must be renewed annually to remain in effect and are due on April 1 of each year. If conditions change, a new application must be submitted to the Commissioner of Health and Human Services, noting the changes requested, including change of ownership.

Filing Fee. A filing fee is required at the time of application for sidewalk café permit and is nonrefundable. Thereafter, an annual renewal fee shall be required. Both fees shall be as established by the Board of Aldermen.

Permit Determination. The Health and Human Services Department shall be given the authority to process, grant or deny all sidewalk café applications. The Department shall review the application for completeness, then will route the request to the Police Chief, Fire Chief, Commissioner of Public Works, Commissioner of Inspectional Services, Director of Planning and Development, and Commissioner of Health and Human Services. Each of the departments may recommend conditions or terms for approval that may be necessary to carry out the policies of the City and to protect the health, safety and welfare of the public, or to prevent disturbance or nuisance. In considering whether to approve an application, the Commissioner of Health and Human Services or designee shall verify that the applicant is qualified to apply, that all application requirements have been met, and all departments noted have been consulted and have recommended approval, with or without conditions.

Transferability. Sidewalk café permits may be transferred only to the successor in interest to any licenses or permits issued to the permittee, provided that the transferee has verified that s/he and the café meet application requirements.

Termination and Enforcement. Restaurants are expected to comply with the provisions of the ordinance. Violations will be enforced by Inspectional Services, which will contact other departments as needed to assure compliance with public health and safety violations. The restaurant will receive a warning upon the first violation; upon a second violation, the applicant must appear before the Health and Human Service Commissioner, who will consider revocation of the license and will have authority to take final action on permit approvals and renewals. Any

department shall have the authority to request revocation of a sidewalk café permit for failure to comply with the conditions of their permit or the requirements of the sidewalk café ordinance.

Liability insurance. The applicant shall be required to provide general liability insurance with limits of not less than \$500,000 for the term of the sidewalk café permit, which names the City as additional insured.

The ED Cluster also recommends a sidewalk café ordinance include:

Intent of Sidewalk Café Ordinance. Sidewalk cafes can enhance the use of public space and complement businesses operations from fixed premises, as well as to promote overall social and economic activity in the City's villages and other commercial areas. They shall be allowed subject to the provisions of the Sidewalk Café Ordinance for legally established restaurants.

Sidewalk Café Definition. A sidewalk café is an outdoor dining or sitting area of a food retailer, contiguous to the food retailer's premises, which is located in whole or in part on a sidewalk and containing removable tables, chairs, barriers, planters, or related appurtenances.

Sidewalk Definition. That portion of the public right of way, which is between the curb lines and adjacent property lines, and is designed for, improved, and ordinarily used for pedestrian travel.

At the present time, there are approximately 400 licensed food establishments in the City, many of which are not candidates for sidewalk seating, due to lack of frontage with sidewalks or due to the nature of the businesses. There are 26 restaurants that have requested sidewalk seating permits to date; a one-stop application process and some of the features of the ordinance are likely to incentivize other restaurants to consider setting out tables, chairs and benches in nice weather, so it is possible this number could double. Provided that the recommended standards are followed, the Economic Development Cluster does not anticipate any problems associated with this increase, particularly since seating will be limited by the space available on the sidewalks.

PREVIOUS REVIEW

In May 2012, the Zoning and Planning Committee considered two related proposals: one to waive parking requirements for outdoor seating and the other to allow additional seating in restaurants. The Board concurred that no action was necessary at that time, given that staff was reviewing parking, generally, and that the concept of sidewalk cafés merited considerations from various departments whose interests could be integrated into a more comprehensive approach.

NEXT STEPS

Staff welcomes the Board's feedback on the proposed concept. If the Committee is generally satisfied with this proposal, staff can begin crafting suitable implementing language. If the Committee wishes to have additional information, it would be helpful to the working group if the Committee could identify their concerns so staff can perform the necessary research to further shape an appropriate ordinance. The Licensing Board normally hears requests for annual permits in April, and it would be ideal if an ordinance were in place for the upcoming requests this year.

Attachment A: Sample one-stop application



Setti D. Warren
Mayor

City of Newton, Massachusetts
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SIDEWALK CAFÉ PERMIT APPLICATION

ATTACHMENT A

Telephone
(617) 796-1120
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To applicants: Sidewalk cafés are an outdoor dining or sitting area of an existing indoor eating establishment which is located in whole or in part on a sidewalk and containing removable furnishings and dining amenities. A sidewalk café permit is required to allow sales of food and drink and may be issued by the Department of Health and Human Services provided that the sidewalk café meets all the requirements (listed on a separate sheet). Applicants should review the requirements, complete this application, and submit with the items noted below:

- ☐ **Completed Application Form.** The fee shall be set by the Board of Aldermen. The recommended current fee is \$100 for a new application and \$50 for renewals.
- ☐ **Explanation of Proposal.** A letter should be submitted with the application that describes the business, indicates proposed hours of operation, explains how additional required parking will be provided, and how the dining area will be separated from the public walkway. The explanation shall also include a detailed description of the type, color, and material of all proposed outdoor furniture, such as tables, chairs, barriers, planters, umbrellas, signs, lighting, and heaters; and any new construction of the façade of the facility or adjacent sidewalk to accommodate the sidewalk café.
- ☐ **Site Plan.** The site plan should show property lines, structures on the property, layout and dimensions of the outdoor dining area, proposed number and location of tables, chairs and other furnishings to be included in the dining area; the relationship of the outdoor dining area to the indoor dining area; and all permanent and temporary fixtures or objects between the curb line and the restaurant (such as trees, utility poles, trash cans, bike racks, signs, etc.). Applicant shall submit three copies on 1"=10' minimum scaled with one set reduced to an 8 ½" x 11" sheet.
- ☐ **License(s) to sell food and/or alcohol.** Existing licenses to sell food or alcohol must be in place before selling alcohol; the facility must apply for an extension of premises and appear before the Board of License Commissioners.
- ☐ **Proof of Liability Insurance.** Liability insurance must meet City standards, naming the City as additionally insured for the term of the permit to the approval of the City Solicitor's Office.

Applicant's Name

Phone

E-mail

Address

Property Owner's Signature

STAFF USE ONLY

Please return to the Department of _____ by ____ (date) _____.

Please initial and date of sign-off in space beside department below, and attach any addition comments or conditions:

☐ Health and Human Services _____ ☐ Public Works _____ ☐ Planning _____
☐ Inspectional Services _____ ☐ Fire _____ ☐ Police _____

ACTION: ☐ Approved ☐ Denied Date _____ BY _____